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REMARKS

This application has been carefully considered in view of the Office Action referenced above and respectfully traverses the rejections as follows:

Regarding the rejection to claims 5, 9, 10, 11 and 17 based upon Harris in view of Shurtleff, Applicant respectfully traverses on the following grounds. The Shurtleff reference is asserted to be essentially identical to the claims except for the magnetic base which is shown in Harris. However, it is respectfully submitted that the claims distinguish over the Harris reference at least in that the gravitational pull directly on the needle in Applicant's claims causes the needle to indicate the current grade angle. This is accomplished, in part, by recognition that the scale can be placed at the bottom of the measurement device so that gravity naturally pulls on the needle to cause it to point at the proper grade angle.

Harris, on the other hand, requires a counter-weighted needle with a pivotal mounting of the counter-weight and appears to rely in part upon the pivotal mounting to provide stability. In Harris' device, gravity pulls the counterweight rather than the indicator needle. This is a much more complicated mechanism than that disclosed and claimed by Applicant. Applicant's structure is significantly simpler in that it relies upon the weight of a simple needle alone with its movement damped by the fluid in the compartment. Applicant's claimed device substitutes a single needle indicator for the three part structure (21, 22 and 58) used in Harris. This three part structure, moreover, requires significant machining to produce. This results in a comparatively much higher cost and complexity than the simple stamped or otherwise formed needle structure of Applicant.

The claims call for the "indicator needle pivotally suspended so that gravitational forces acting on the needle cause" the functional pointing of the needle (or similar limitations). It is respectfully submitted, as stated above, that in Harris it is the force of gravity pulling on the weight 21 that controls the movement of the needle, thus failing to meet or suggest the claim limitation.

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Thus, Applicant's invention is quite simple and less costly and complex to manufacture compared to the device of the Harris reference. It has been noted by the CAFC in *In re Oetiker* that "*Oetiker's Invention is simple. Simplicity is not inimical to patentability.*" (In Re Oetiker, 977 F.2d 1443) Accordingly, this distinction of significant simplification cannot be dismissed or ignored, rather, it may be suggestive of patentability. Reconsideration and allowance is respectfully requested.

Regarding the rejection of claims 6-8, 12-16 and 18-22, based upon Harris, Shurtleff and Dougherty, Applicant also traverses this rejection on the following grounds. It is noted first of all that the effective date of the Dougherty reference is no earlier than Nov. 8, 2001. Applicant's application claims a priority date of a provisional application dated Feb. 27, 2001. This provisional application contains similar disclosure to that of the present non-provisional application. Accordingly, **the Dougherty reference cannot be considered prior art** to the present application. Thus, reconsideration and allowance is respectfully requested.

In addition, it is noted that the Dougherty reference is involved with a totally different field than that of Applicant. Dougherty is related to a conduit bending device. One of ordinary skill in the art of design or use of slope measurement devices cannot be properly charged with knowledge of the conduit bending art. Thus, even if the Dougherty reference were properly prior art to the present invention, it would be non-analogous and inapplicable in rejecting the present application. Reconsideration and allowance is respectfully requested.

In view of this communication, all claims are believed to be in condition for allowance and such is respectfully requested at an early date. It is respectfully noted that the inventor's prior claims were drafted without benefit of representation or knowledge of claim-drafting standards.

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It is further requested that the Examiner contact the undersigned by telephone to discuss the present response. The undersigned made such request in response to the first Office Action (which was clearly prior to the final rejection) but was not contacted by the Examiner. Accordingly, a telephone interview is believed proper at this time even though after final.

Respectfully submitted,

DRAFT

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